



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 4, 1998

S. 8

Superfund Cleanup Acceleration Act of 1998

*As ordered reported by the Senate Committee on Environment and Public Works
on March 26, 1998*

SUMMARY

S. 8 would amend and reauthorize spending for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as the Superfund Act, which governs the cleanup of sites contaminated with hazardous substances. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

The Superfund program is administered by the Environmental Protection Agency (EPA), which evaluates the need for cleanup at sites brought to its attention, identifies parties liable for the costs of cleanup, and oversees cleanups conducted either by its own contractors or by the liable parties. These EPA activities are currently funded by appropriations from the Hazardous Substance Superfund Trust Fund and from the general fund of the Treasury.

The bill would authorize appropriations of about \$8 billion over the 1999-2003 period for the Superfund program. In addition, S. 8 would provide direct spending authority of about \$1.3 billion over the same period for EPA to compensate certain private parties for completing cleanup activities for which they are not liable. Such cleanup costs would be defined as “orphan share” spending under S. 8. Finally, the bill would result in a decrease in the amounts recovered by EPA from private parties who are liable for cleanup expenses incurred by that agency and would authorize EPA to spend the recovered sums without further appropriation. (Under current law, such recoveries are deposited in the Superfund Trust Fund, and any spending authority is subject to appropriation action.) New direct spending related to those recoveries would total about \$1.2 billion over the 1999-2003 period.

S.8 would impose intergovernmental mandates as defined in Unfunded Mandates Reform Act of 1995 (UMRA). However, CBO estimates that the costs of complying with these mandates would not be significant and would not exceed the threshold established in the law (\$50 million in 1996, indexed annually for inflation).

S. 8 also would impose private-sector mandates as defined in UMRA by setting a temporary moratorium on certain lawsuits. CBO estimates that the direct costs of complying with these mandates would be well below the statutory threshold specified in UMRA (\$100 million in 1996 dollars adjusted annually for inflation). Overall, the bill would tend to lower the costs to the private sector of complying with regulations under CERCLA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 8 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By Fiscal Year, in Millions of Dollars					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Superfund Spending Under Current Law						
Budget Authority ^a	1,500	650	0	0	0	0
Estimated Outlays	1,428	1,237	774	355	143	38
Proposed Changes						
Estimated Authorization Level	0	1,609	1,609	1,609	1,609	1,609
Estimated Outlays	0	408	987	1,308	1,458	1,533
Superfund Spending Under S. 8						
Estimated Budget Authority /						
Authorization Level ^a	1,500	2,259	1,609	1,609	1,609	1,609
Estimated Outlays	1,428	1,645	1,761	1,663	1,601	1,571
CHANGES IN DIRECT SPENDING						
Spending for Orphan Shares						
Estimated Budget Authority	0	91	350	300	300	300
Estimated Outlays	0	91	350	300	300	300
Changes to Superfund Recoveries						
Estimated Budget Authority	0	350	300	300	300	250
Estimated Outlays	0	88	209	267	307	293
Total Changes in Direct Spending						
Estimated Budget Authority	0	441	650	600	600	550
Estimated Outlays	0	179	559	567	607	593

a. The 1998 level is the amount appropriated for that year; the 1999 level reflects an advance appropriation for 1999 made in 1998.

BASIS OF ESTIMATE

For purposes of this estimate, CBO assumes that S. 8 will be enacted by the end of this fiscal year, and that all funds authorized by the bill will be appropriated in equal annual amounts over the next five years. Estimated outlays are based on the historical spending patterns of the Superfund program.

Spending Subject to Appropriation

Superfund Program. Title IX would authorize appropriations totaling \$7.5 billion over the 1999-2003 period for EPA activities in support of the Superfund program. In addition, this title would authorize appropriations of \$15 million over the 1999-2003 period for technical assistance grants to community action groups affected by a Superfund site. Title I would authorize the appropriation of \$75 million annually over the five-year period for grants to be used for site characterization, assessment, and cleanup actions at brownfield facilities. (Brownfield facilities are properties where the presence, or potential presence, of a hazardous substance complicates the expansion or redevelopment of the property.) These funds could also be used by states and local governments to establish revolving loan funds to provide money for eligible work at brownfield facilities. Title I also would authorize the appropriation of \$25 million annually over the 1999-2003 period for grants to states to establish programs to facilitate the voluntary cleanup of properties contaminated with hazardous materials.

Coeur d'Alene Basin. Title VII would authorize the appropriation of \$5 million to Idaho to develop and implement a plan to restore, manage, and enhance the natural recovery of the Coeur d'Alene basin in Idaho. In addition, this title would authorize the appropriation of such sums as are necessary to the federal trustees within the Coeur d'Alene basin to pay for the federal costs associated with implementing a plan to restore the basin. We estimate that those costs would total about \$20 million over the next five years, but that over the long term, total restoration costs could be much greater.

Federal land managers (the federal trustees) in this region include the Fish and Wildlife Service and the Forest Service. The basin in northern Idaho is over 3,000 square miles in size. Parts of this region have been contaminated with millions of tons of mining tailings and contaminated sediments from metals mining and ore processing activities in this area. The basin area includes one current Superfund site.

S. 8 would require the Coeur d'Alene Basin Commission (an existing group that includes representatives of industry and of federal, state, tribal, and local governments) to prepare a

plan within two years to restore, manage, and enhance the natural recovery of the basin. The amount and the timing of federal funds that would be needed to implement such a plan is uncertain because it is unclear how much the plan would emphasize the enhancement of the natural recovery of the basin instead of traditional remedial actions to restore the basin. Also, until the plan is completed, CBO does not know which parts of the basin would be targeted for restoration. Preliminary estimates of the cost to restore the area range from less than \$100 million to \$1 billion. Currently, the commission spends about \$3 million annually on planning and restoration activities. It is also unclear how much of the cost the plan would assign to federal agencies with responsibilities within the basin.

CBO estimates that, over the next five years, the federal contribution to implementing the basin restoration plan would be \$5 million annually. In the decades ahead, however, federal costs could be much larger, depending on the size of the region targeted and the approach to restoration that is adopted under the plan. Any federal funds provided for restoring the basin would be subject to future appropriation acts.

Superfund Cleanup Costs At Federal Sites. S. 8 would amend the procedures EPA uses to select appropriate cleanup solutions (known as remedies) at each Superfund site. Title IV would require EPA to consider future land use at a site when selecting an appropriate remedy, and would add reasonable cost as a factor to consider in remedy selection. The bill would also allow EPA to delegate oversight of the Superfund program for federal facilities to individual states that choose to undertake this work. These changes in the remedy selection procedures and oversight could change the cost of future cleanup projects at federal facilities. However, any savings or increases in costs would be small in the next five years because the changes would not dramatically affect spending at sites where remediation has begun.

Direct Spending

Reimbursement for Orphan Share Spending. Title V would establish an entitlement to reimbursement from the federal government for certain Superfund cleanup expenditures made by private parties who are not liable for such costs. Title 9 would limit the amount of such reimbursements to \$200 million in 1999, \$350 million in 2000, \$300 million a year from 2001 through 2003, and \$250 million a year in 2004 and thereafter. Based on information from EPA, CBO estimates government reimbursements would be about \$1.3 billion over the 1999-2003 period. Specifically, we expect that the new orphan share spending would be at the annual caps for 2000 through 2003, but significantly below the cap in the initial year of 1999.

Title V would make several important changes to current law concerning Superfund liabilities of private parties and the procedures for allocating cleanup responsibilities equitably among the multiple "potentially responsible parties," or PRPs (site owners and operators, and offsite parties that contributed hazardous substances), involved in a cleanup project. Section 504 defines how an independent "allocator," chosen by EPA and the PRPs at a site, would determine the share of the cleanup costs that each PRP must contribute.

The allocator would also be charged with determining the size of any "orphan shares" at a given site. Under S. 8, orphan shares consist primarily of two components, any liability assigned to defunct or insolvent private parties, and any liability that is eliminated or reduced by the provisions of the bill. In addition, S. 8 would eliminate, limit, or reduce the cleanup liability for some PRPs—notably small businesses, municipal governments that owned or operated landfills, and generators and transporters of municipal solid waste or recyclable materials. The difference between the cleanup cost attributed to a party by the allocator and a smaller amount actually paid by the party, because of a liability exemption, reduction, or limitation resulting from enactment of S. 8, would also become part of the orphan share. Based on the characteristics of sites currently in the Superfund program, CBO estimates that approximately one-third of cleanup costs would be assigned to the orphan share.

The orphan share of Superfund cleanup expenses would be paid initially by one or more PRPs, who would later be reimbursed by the federal government. Based on information from EPA, CBO estimates that reimbursements for orphan shares would begin in late 1999, and would increase as cleanup progresses at sites currently undergoing remediation and as additional cleanup allocations are made and settlements reached under the new law. CBO estimates that direct spending resulting from this provision would be about \$90 million in 1999 and at the caps cited above in subsequent years because, beginning in 2000, the demand for reimbursements would probably exceed the spending caps imposed by the bill. Spending would continue for many years into the future, though outlays in any one year could not exceed the annual limits set in Title IX. PRPs entitled to reimbursement of orphan share costs that would cause the government to spend more than the annual limits in Title IX would be entitled to reimbursement (with interest) in the following year.

Superfund Recoveries. EPA's enforcement program attempts to recover costs the agency incurs at cleanup projects that are the responsibility of private parties. Under current law, spending of the amounts recovered is subject to annual appropriation action, but Title IX would allow EPA to retain and spend any sums it recovers from PRPs at Superfund sites. Under current law, CBO estimates such recoveries would average about \$300 million annually over the next five years. Under S. 8, however, such recoveries would decline because of the orphan share provisions and the changes made to the Superfund liability of private parties. As a result, we expect that enacting the bill would lead to a decrease in

offsetting receipts to the Treasury of about \$170 million over the 1999-2003 period. In addition, we estimate the new authority to spend sums recovered from PRPs would result in new direct spending of about \$1 billion over the next five years. In total, these provisions would cost about \$1.2 billion over the 1999-2003 period.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	179	559	567	607	593	529	508	497	468	455
Changes in receipts						not applicable					

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

By preempting state laws and setting out new requirements for the state of Idaho, S.8 would impose intergovernmental mandates as defined in UMRA. However, CBO estimates that the costs of complying with these mandates would not be significant and would not exceed the threshold established in the law (\$50 million in 1996, indexed annually for inflation). The bill would also benefit state, local, and tribal governments by reducing their share of cleanup costs.

Intergovernmental Mandates

Preemption of State Liability Laws. Title V of the bill would limit or eliminate the liability of certain parties under federal and state laws for future cleanup costs at Superfund sites. Parties receiving some liability relief would include generators and transporters of municipal solid waste and municipal owners or operators of certain landfills. Currently, states can sue PRPs at a Superfund site under their own hazardous waste cleanup laws. These preemptions of state laws would constitute intergovernmental mandates as defined in UMRA. However,

according to EPA and state officials, states rarely take actions against PRPs at a Superfund site under their own laws. In addition, those states whose cleanup laws establish joint and several liability could in many cases recover their costs from other PRPs at the site. Therefore, CBO estimates that the cost to states to comply with the mandates would not be significant.

New Requirements for Idaho. Section 705 of the bill would require the Coeur d'Alene Basin Commission, an advisory committee of Idaho's environmental protection agency, to develop and submit to the governor a plan to clean up the Coeur d'Alene river basin, which contains a Superfund site and has other environmental problems. The committee would have two years to submit the plan and the governor would be required to finalize and implement the plan by negotiating enforceable agreements with responsible parties. The section would authorize appropriations of \$5 million for the state to pay for the development and implementation of the plan. Under current law, the state is paying 10 percent of the costs of cleaning up a portion of the Superfund site in the river basin. It is unclear how much of the costs of implementing the plan the state would pay.

Other Impacts on State, Local, and Tribal Governments

Enactment of S. 8 would benefit state, local, and tribal governments by creating new grant programs for states, affording states greater participation in cleanups, and relieving local governments from certain costs and liability under current law.

New Grant Funding. Title I of the bill would create three new grant programs to fund state voluntary response programs and the assessment and cleanup of brownfield sites. States or localities would have to match some of the funds and pay for administering one of the programs. A total of \$100 million for each of fiscal years 1999 through 2003 would be authorized for these programs.

Expanded State Role. S. 8 would amend the current Superfund program to allow greater participation by the states. Under current law, states can enter into cooperative agreements with EPA to carry out most cleanup activities on a site-by-site basis, but only EPA has the authority to select the method of cleanup at each site. Under this bill, states could be granted the authority to apply their own cleanup requirements at Superfund sites within their borders or to perform certain regulatory activities under federal law at the sites. States could also obtain the authority to oversee cleanups at federally owned Superfund sites. EPA would be authorized to provide grants to states or to enter into contracts or cooperative agreements with them. States receiving the authority to recover cleanup costs from responsible parties

on behalf of the federal government would be allowed to retain 25 percent of any federal response costs recovered, as well as amounts equal to the states' own response costs.

Lower State Cost-Share for Cleanups. S. 8 would lower the share of cleanup costs that state governments pay. Under current law, when the federal government conducts a site cleanup, the state in which the site is located must pay 10 percent of the costs. If the site was owned or operated by the state or a local government, the state's share of the costs rises to at least 50 percent. States also must pay all operation and maintenance costs at a site after the cleanup is completed. S. 8 would amend the current arrangement to require states to pay 10 percent of all costs, including those for operation and maintenance. The bill would also lower states' share of the costs at sites owned or operated by state or local governments to 10 percent.

Liability Relief for Local Governments. Two titles of the bill would limit or eliminate various parties' liability for cleanup costs. Title V would cap the liability of parties (including local governments) that generated or transported municipal solid waste or sewage sludge to a landfill that also accepted other wastes and that became a Superfund site. These landfills are known as "co-disposal" landfills. If they are not otherwise exempted from liability by the bill, these parties would have a total aggregate liability of 10 percent of cleanup costs.

Title V would also cap the liability of municipalities that owned or operated co-disposal landfills on the NPL. Roughly 160 (65 percent) of the approximately 250 co-disposal landfills on the NPL have at least one municipal owner or operator. With some exceptions, large municipalities would be held liable for no more than 20 percent of future cleanup costs, and small municipalities would be responsible for no more than 10 percent of the costs. Under current guidance, EPA can cap the liability of municipalities at 20 percent of estimated cleanup costs, although that percentage can be adjusted up or down for site-specific factors. This title would also limit the liability of various local entities for cleanup costs at certain Superfund sites and would create an expedited settlement process for certain parties, including municipalities with a limited ability to pay.

Limits on Natural Resource Damages. S. 8 would amend federal law to limit the amount of money that the federal government, states, and tribes could seek for damages to natural resources. Currently, governmental or tribal trustees can sue under federal law for injury to, destruction of, or loss of natural resources. While this change could lower future damage awards that states and tribes receive, many states could instead sue for damages under their own laws. As of 1995, 28 states had laws allowing such suits.

Lawsuit by the Coeur d'Alene Tribe. The bill could prevent the Coeur d'Alene Indian tribe of Idaho from pursuing their pending lawsuit against several mining companies for damages to natural resources. The tribe is seeking over \$1 billion in damages. Section 705 would require the governor of Idaho to seek to negotiate enforceable agreements with responsible parties in the Coeur d'Alene river basin regarding cleanup costs. Any party that settles with the governor within two years would be protected from lawsuits under federal environmental laws. Since the tribe is suing the companies under CERCLA, this would preclude them from continuing their lawsuit. CBO cannot predict how much the tribe would receive either from the pending lawsuit or from the agreements authorized by this bill.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 8 would impose private-sector mandates by setting a temporary moratorium on litigation to recover response costs during the negotiation phase of an expedited settlement and during the determination phase of the allocation process. Section 503 would impose a temporary moratorium (for up to one year) on litigation against parties engaged in an expedited settlement with the federal government. Under the bill, the government would seek an expedited settlement in certain cases in which parties have a limited ability to pay or have made a small contribution to the hazardous substances (or toxic effect) at a site. Most of the parties that would be eligible for an expedited settlement under S. 8 would likely be protected from further liability under the expedited settlements granted under current law. Therefore, the cost of delaying potential litigation against such parties should be small.

S. 8 would establish a new process for allocating liability at sites on Superfund's National Priorities List that meet certain criteria. The bill would impose a private-sector mandate by setting a temporary moratorium on litigation aimed at recovering response costs during the determination phase of the allocation process. Specifically, section 504 would prohibit anyone from asserting a claim until four months after the release of a final allocation report. (At the same time, the bill would allow potentially responsible parties to nominate other parties for consideration in the allocation process.) An allocation report would be released at the end of the determination phase, and would contain a list of parties deemed to be responsible for recovery costs at a Superfund site. CBO expects that the costs of delaying a claim to recover cleanup costs would be negligible, primarily because post-moratorium litigation is likely to be rare in view of the incentives to settle for the allocated share under the new process.

Under current law, the liability standard for a Superfund site is retroactive, strict, and generally joint and several. Liability is retroactive because it applies to contamination caused by activities that took place before CERCLA was enacted in 1980. Liability is strict because a responsible party is liable even if it was not negligent. Liability is joint and several in cases

where the responsibility for contamination at a site is not easily divisible. In such cases, the government can hold one or more parties liable for the full costs of cleanup, even if other parties at the site are liable. Current law also permits third-party lawsuits, in which parties held responsible by EPA (or by other responsible parties) may sue others who do not settle with the government for contribution.

Generally, provisions of the bill are meant to speed up the process of cleanup at Superfund sites and reduce some of the burdens of compliance. S. 8 would direct the government to identify the costs attributed to responsible parties exempted under the bill (orphan shares) and to cover the balance of costs left over when allocation shares have been capped or limited according to the rules specified in the bill. Projects covered by the allocation process would include new cleanup projects and ongoing projects that fit certain criteria in the bill. Potentially responsible parties at cleanup projects at certain other Superfund sites would be allowed to request the new allocation process, but an orphan share allocation would not apply in those cases. Because the government would be responsible for covering the costs of the orphan shares, the portion of cleanup costs allocated to the private sector under the new allocation process would be lower than under current law.

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